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HOUSE BILL 237

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Miguel P. Garcia

AN ACT

RELATING TO CONSERVANCY DISTRICTS; REQUIRING ELECTIONS WITHIN
CERTAIN CONSERVANCY DISTRICTS TO BE CONDUCTED BY MAIL-IN
BALLOT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 73-14-20 NMSA 1978 (being Laws 1975,
Chapter 262, Section 3, as amended) is amended to read:

"73-14-20. DEFINITIONS. -- As used in Sections 73-14-18
through ~~[73-14-32]~~ 73-14-30 NMSA 1978:

~~[A. "absent voter" means a qualified elector who
has requested an absentee ballot forty days prior to an
election;~~

~~B. "absentee early voter" means a qualified elector
who has voted early, prior to election day, on an electronic
voting machine at a designated absentee early voter precinct;~~

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1 ~~C.~~ A. "benefited area" means that area described
2 by a property appraisal that receives a benefit as a result of
3 the creation of a district for any of the purposes specified in
4 Section 73-14-4 NMSA 1978;

5 ~~D.~~ B. "election director" means the person whom
6 the board of directors may request to provide election services
7 by a contract approved by the secretary of state;

8 ~~E.~~ C. "election officer" means a person appointed
9 by the board of directors to conduct the election in the
10 absence of an election director and who performs all election
11 services required by statute;

12 ~~F.~~ D. "list compiler" means a contractor approved
13 by the board of directors to compile and produce a qualified
14 elector list for a conservancy district;

15 ~~G.~~ E. "qualified elector" means an individual who
16 owns real property within the benefited area of the conservancy
17 district and who has provided proof of an ownership interest to
18 one of the sources specified in Subsection B of Section
19 73-14-20.1 NMSA 1978 within the required time period, or who
20 resides on and owns legal or equitable title in tribal lands
21 and who is over the age of majority;

22 ~~H.~~ F. "qualified ~~[elector's]~~ elector list" means
23 the list compiled before each election that contains the
24 individual names of all qualified electors; and

25 ~~I.~~ G. "residence" means a dwelling that lies

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1 partially or completely within the benefited area. "

2 Section 2. Section 73-14-20.1 NMSA 1978 (being Laws 1990,
3 Chapter 48, Section 1, as amended) is amended to read:

4 "73-14-20.1. QUALIFIED ELECTOR LIST. --

5 A. The board of directors of [~~the~~] a conservancy
6 district may contract for a list compiler before each election
7 to compile and produce a qualified [~~elector's~~] elector list for
8 the district. The list compiler shall deliver the completed
9 list to the election director no later than forty-five days
10 prior to a district election. An individual who purchases
11 property ninety days prior to an election and whose name does
12 not appear on the qualified [~~elector's~~] elector list shall not
13 vote in that election. The individual may become certified to
14 vote in a future election by filing [~~his~~] the deed of title
15 with the appropriate county clerk at least ninety days before
16 the next conservancy district election.

17 B. Names of qualified electors shall be obtained
18 from the records of the county clerk of the appropriate county,
19 the appropriate county assessor of the appropriate county,
20 records of the conservancy district or from the census bureau
21 and enrollment records provided by the pueblos. The county
22 assessor of the appropriate county, the county clerk of the
23 appropriate county and the tribal representatives of the
24 appropriate pueblos shall deliver to the election director all
25 records regarding qualified electors of the benefited area no

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1 later than the last day of each March before a district
2 election.

3 C. Updating the qualified ~~[elector's]~~ elector list
4 shall consist of adding, for any new qualified elector who has
5 purchased property in the district, the name, address and
6 description of all property owned by the qualified elector in
7 the benefited area and removing the name of any elector who is
8 deceased or ~~[is no longer a qualified elector because he]~~ who
9 no longer owns property within the benefited area.

10 D. Proof of ownership of land within the benefited
11 area requires one of the following:

12 (1) a recorded deed or real estate contract
13 indicating current ownership of land within the benefited area;

14 (2) an individual's name on county clerk
15 records indicating a description of property the individual
16 owns within the benefited area;

17 (3) an individual's name on a list compiled by
18 the governing body of a pueblo within the benefited area
19 indicating that the individual named is residing on and has
20 legal or equitable title in the pueblo; or

21 (4) a current property tax bill indicating
22 ownership of land within the benefited area.

23 ~~E. [The election officer or the election director~~
24 ~~shall distribute to each polling place a current qualified~~
25 ~~elector's list for the appropriate county. The election~~

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1 ~~officer or the election director shall distribute the qualified~~
2 ~~elector's list to each polling place within a pueblo located~~
3 ~~within the benefited area. A qualified elector may vote at any~~
4 ~~one polling place in the pueblo or county where he owns land.]~~
5 An individual who seeks to cast his vote but ~~[finds his]~~ whose
6 name is not on the qualified ~~[elector's]~~ elector list shall not
7 be allowed to vote in that election. "

8 Section 3. Section 73-14-24 NMSA 1978 (being Laws 1975,
9 Chapter 262, Section 7, as amended) is amended to read:

10 "73-14-24. TIME AND PROCEDURE FOR ELECTION. --

11 A. On the first Tuesday after the first Monday in
12 January prior to the middle Rio Grande conservancy district
13 election, an election proclamation shall be published that
14 includes a list of the offices for which a candidate may file,
15 the date and place at which declarations of candidacy shall be
16 filed and the date of the election. The election proclamation
17 shall be published once in a newspaper of general circulation
18 in the counties in which the election shall be held.

19 B. The members of the boards of directors created
20 pursuant to provisions of Sections 73-14-18 through ~~[73-14-32]~~
21 73-14-30 NMSA 1978 shall be elected by mail-in ballot at an
22 election ~~[held]~~ on the first Tuesday after the first Monday in
23 June ~~[in 2001 and]~~ in each odd-numbered year ~~[thereafter]~~.

24 C. The elections for the members of the board of
25 directors of ~~[the]~~ a conservancy district shall be conducted,

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1 counted and canvassed as provided in Sections 73-14-18 through
2 ~~[73-14-32]~~ 73-14-30 and 73-14-84 through 73-14-86 NMSA 1978.

3 ~~[The polls may be opened and closed in the same manner as
4 provided for the general election under the Election Code.]~~

5 ~~D. If only one candidate has filed a declaration of
6 candidacy for a position to be filled at an election, no
7 declared write-in candidate has filed for a position and there
8 are no questions or bond issues on the ballot, only one polling
9 place for the election may be designated. The one polling
10 place may be located in the office of the election director or
11 in the office of the middle Rio Grande conservancy district.]"~~

12 Section 4. Section 73-14-27 NMSA 1978 (being Laws 1975,
13 Chapter 262, Section 10, as amended) is amended to read:

14 "73-14-27. ELECTION-- ~~[LOCATION OF POLLING PLACES]~~ NOTICE
15 OF ELECTION ~~[CREATION OF ABSENT VOTER PRECINCT]~~. -- [A.] For
16 every conservancy district election, ~~[the board of directors
17 shall provide for adequate polling places within the boundaries
18 of the conservancy district. In addition, the board of
19 directors shall provide a polling place at the main office of
20 the conservancy district and may provide such other locations
21 as it deems necessary. The board of directors may also create
22 absentee early voter and absent voter precincts.]~~

23 ~~B.]~~ notice of the election shall be published three
24 times in a newspaper of general circulation within each county
25 of the district. ~~[Each]~~ The notice shall state the time

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1 [place] and purpose of the election and that each qualified
2 elector will receive a mail-in ballot prior to the election.
3 The notice shall be published twenty, ten and five days before
4 the election. "

5 Section 5. Section 73-14-28 NMSA 1978 (being Laws 1975,
6 Chapter 262, Section 11, as amended) is amended to read:

7 "73-14-28. ELECTION JUDGES. -- The election officer or the
8 election director shall select [~~two or more~~] three election
9 judges for [~~each polling place established within the~~] a
10 conservancy district. [~~The election officer or the election~~
11 ~~director shall also appoint absentee early voter and absent~~
12 ~~voter precinct boards.~~]"

13 Section 6. Section 73-14-28.1 NMSA 1978 (being Laws 1996,
14 Chapter 42, Section 12) is amended to read:

15 "73-14-28.1. ELECTION. -- The board of directors of the
16 conservancy district shall conduct the election pursuant to
17 [~~Chapter 73, Article 14~~] Sections 73-14-18 through 73-14-30
18 NMSA 1978 and other applicable election laws or shall select an
19 election director [~~as defined in Section 73-14-20 NMSA 1978~~] to
20 provide election services. The election director shall operate
21 pursuant to a contract approved by the secretary of state. The
22 election [~~may~~] shall be conducted by [~~emergency paper ballot,~~
23 ~~electronic voting machine or any other state-certified~~
24 ~~tabulating voting machine~~] mail-in ballot. "

25 Section 7. Section 73-14-29 NMSA 1978 (being Laws 1975,

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1 Chapter 262, Section 12, as amended) is amended to read:

2 "73-14-29. FORM OF BALLOT- - ELECTION MATERIALS. - - The
3 election officer or ~~[the]~~ election director shall oversee the
4 preparation and printing of the ~~[ballots]~~ election materials
5 for a conservancy district election. ~~[Ballots]~~ Election
6 materials shall be prepared and printed at the expense of the
7 conservancy district. ~~[The election officer or the election~~
8 ~~director shall oversee the preparation of a separate ballot for~~
9 ~~each county within the conservancy district or the preparation~~
10 ~~of one ballot for use within the entire conservancy district.]~~
11 The board of directors shall approve the form of the ~~[ballot.~~
12 ~~The ballot shall contain the numbered position or positions as~~
13 ~~the case may be to which directors are to be elected at the~~
14 ~~election, with the names of all candidates for each position~~
15 ~~listed under that designation]~~ election materials. Election
16 materials shall include:

17 A. ballots. The election officer or election
18 director may prepare a separate ballot for each county within
19 the conservancy district or one ballot for use within the
20 entire conservancy district. For elections at which directors
21 are selected, the ballot shall contain the numbered positions
22 to which directors are to be elected at the election, with
23 names of all candidates for each position listed under that
24 designation:

25 B. official inner envelopes for use in sealing

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1 completed ballots;

2 C. official mailing envelopes for use in returning
3 the official inner envelopes to the election officer or
4 election director. The reverse of each official mailing
5 envelope shall contain a form, to be executed by the qualified
6 elector completing the ballot, that contains such affirmations
7 as the election officer or election director shall prescribe;

8 D. ballot instructions describing how to complete
9 and return ballots; and

10 E. official transmittal envelopes for use by the
11 election officer or election director in mailing ballot
12 materials. "

13 Section 8. A new Section 73-14-29.1 NMSA 1978 is enacted
14 to read:

15 "73-14-29.1. [NEW MATERIAL] MAILED BALLOTS--QUALIFIED
16 ELECTOR LIST.--

17 A. The election officer or election director shall
18 enter the following on the qualified elector list:

19 (1) the date of the mailing of the ballot to
20 the qualified elector; and

21 (2) the date and time the completed ballot was
22 received from the qualified elector by the election officer or
23 election director.

24 B. No later than thirty days prior to the date of a
25 conservancy district election, the election officer or election

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1 director shall mail a set of election materials to each
2 qualified elector.

3 C. The qualified elector list is a public record
4 open to public inspection in the election officer's or election
5 director's office during regular office hours. "

6 Section 9. A new Section 73-14-29.2 NMSA 1978 is enacted
7 to read:

8 "73-14-29.2. [NEW MATERIAL] MAILED BALLOTS--MANNER OF
9 VOTING.--A qualified elector voting in a conservancy district
10 election shall secretly mark the ballot, place it in the
11 official inner envelope and securely seal the envelope. The
12 elector shall then:

13 A. place the official inner envelope inside the
14 official mailing envelope and securely seal the envelope; and

15 B. complete the form on the reverse of the official
16 mailing envelope, which shall include an affirmation by the
17 elector under penalty of perjury that the facts stated in the
18 form are true. "

19 Section 10. A new Section 73-14-29.3 NMSA 1978 is enacted
20 to read:

21 "73-14-29.3. [NEW MATERIAL] MAILED BALLOTS--RECEIPT OF
22 BALLOTS BY ELECTION OFFICER OR ELECTION DIRECTOR.--

23 A. The election officer or election director shall:

24 (1) mark on each completed official mailing
25 envelope the date and time of receipt;

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1 (2) record this information in the qualified
2 elector list; and

3 (3) safely keep the official mailing envelope
4 unopened in a locked and sealed ballot box until it is
5 transmitted to the election judges on election day or until it
6 is canceled and destroyed in accordance with law.

7 B. The election officer or election director shall
8 accept completed official mailing envelopes until 7:00 p.m. on
9 election day. A completed official mailing envelope received
10 after that time shall not be opened but shall be preserved by
11 the officer or director until the time for election contests
12 has expired. In the absence of a restraining order after
13 expiration of the time for election contests, the election
14 officer or election director shall destroy all late official
15 mailing envelopes without opening or permitting the contents to
16 be examined, cast, counted or canvassed.

17 C. At 5:00 p.m. on the Monday immediately preceding
18 the date of election, the election officer or election director
19 shall record the numbers of the unused ballots and shall
20 publicly destroy all such unused ballots. The officer or
21 director shall execute and maintain a certificate of
22 destruction, which shall include the numbers on the ballots
23 destroyed. "

24 Section 11. A new Section 73-14-29.4 NMSA 1978 is enacted
25 to read:

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1 "73-14-29.4. [NEW MATERIAL] HANDLING OF BALLOTS BY

2 ELECTION JUDGES. --

3 A. Before opening an official mailing envelope, the
4 election judges shall determine that the required information
5 has been completed on its reverse.

6 B. If the qualified elector's signature is missing,
7 the presiding judge shall write "Rejected" on the front of the
8 official mailing envelope. The election officer or election
9 director shall enter the qualified elector's name in the
10 signature rosters and shall write the notation "Rejected -
11 Missing Signature" in the "Notations" column of the signature
12 rosters. The presiding judge shall place the official mailing
13 envelope unopened in an envelope provided for rejected ballots,
14 seal the envelope and write the qualified elector's name on the
15 front of the envelope and deposit it in the locked ballot box.

16 C. An accredited challenger may examine the
17 official mailing envelope and may challenge the ballot of any
18 qualified elector because the official mailing envelope has
19 been opened prior to being received by the election judges.
20 Upon the challenge of a ballot, the election judges shall
21 follow the same procedure as when ballots are challenged
22 pursuant to the Election Code when a person attempts to vote in
23 person. If a challenge is upheld, the official mailing
24 envelope shall not be opened but shall be placed in an envelope
25 provided for challenged ballots. The same procedure shall be

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1 followed in canvassing and determining the validity of
2 challenged ballots pursuant to this section as with other
3 challenged ballots.

4 D. If the official mailing envelopes have been
5 properly subscribed and the qualified electors have not been
6 challenged:

7 (1) the election judges shall open the
8 official mailing envelopes and deposit the ballots in their
9 still-sealed official inner envelopes in the locked ballot box;
10 and

11 (2) the election officer or election director
12 shall enter the voter's name and residence address as shown on
13 the official mailing envelope in the signature rosters.

14 E. Prior to 7:00 p.m. on the day of the election,
15 the election judges may either remove the ballots from the
16 official inner envelopes and count and tally the results or
17 count and tally the ballots on an electronic voting machine the
18 same as if the qualified elector had voted in person. It is
19 unlawful for any person to disclose the results of a count and
20 tally or the registration on a voting machine of ballots prior
21 to 7:00 p.m. on the day of the election."

22 Section 12. A new Section 73-14-29.5 NMSA 1978 is enacted
23 to read:

24 "73-14-29.5. [NEW MATERIAL] CANVASS--RECOUNT OR RECHECK--
25 DISPOSITION.--If electronic voting machines are not used to

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1 register the mailed ballots, the ballots shall be canvassed,
2 recounted and disposed of in the manner provided by the
3 Election Code for the canvassing, recounting and disposition of
4 paper ballots. If voting machines are used to register the
5 ballots, the ballots shall be canvassed and rechecked in the
6 manner provided by the Election Code for the canvassing and
7 recheck of ballots cast on a voting machine; provided, in the
8 event of a contest, voting machines used to register the
9 ballots shall not be rechecked but the ballots shall be
10 recounted in the manner provided by the Election Code for the
11 recounting of paper ballots. A contest shall be conducted
12 pursuant to the contest provisions of the Election Code. "

13 Section 13. A new Section 73-14-29.6 NMSA 1978 is enacted
14 to read:

15 "73-14-29.6. [NEW MATERIAL] VOTING WHEN NO MAILED BALLOT
16 RECEIVED. --

17 A. Except as provided in this section, no person
18 shall vote in person in a conservancy district election subject
19 to the provisions of Sections 73-14-18 through 73-14-30 NMSA
20 1978.

21 B. At any time prior to 5:00 p.m. on the Monday
22 immediately preceding the date of the election, a qualified
23 elector who has not received a mailed ballot may execute, in
24 the office of the conservancy district, a sworn affidavit
25 stating that he did not receive the ballot. Upon receipt of

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1 the sworn affidavit, the election officer or election director
2 shall issue the qualified elector a replacement ballot.

3 C. The election officer or election director, no
4 later than forty-eight hours after the close of the election,
5 shall remove the outer envelopes of the replacement ballots
6 and, without removing or opening the inner envelopes, determine
7 if a mailed ballot from a qualified elector was received by
8 7:00 p.m. on election day. Upon making that determination, the
9 officer or director shall remove the inner envelope without
10 opening it, retain the outer envelope with the other election
11 returns and place the inner unopened envelope in a secure
12 container to be transmitted to the election judges to be
13 tallied and included in the election results.

14 D. The election officer or election director shall
15 prescribe and furnish the affidavits, replacement ballots and
16 necessary envelopes for purposes of this section. "

17 Section 14. REPEAL. -- Sections 73-14-31 through 73-14-31.3
18 NMSA 1978 (being Laws 1975, Chapter 262, Section 14, Laws 1996,
19 Chapter 42, Sections 15 and 16 and Laws 1999, Chapter 168,
20 Section 8, as amended) are repealed.

21 Section 15. EFFECTIVE DATE. -- The effective date of the
22 provisions of this act is July 1, 2005.